



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Approving Lease Agreement With Head Start Child Development Council, Inc., for the Lodi Look Building

MEETING DATE: July 21, 2010

PREPARED BY: Interim Parks and Recreation Director

RECOMMENDED ACTION: Adopt resolution approving lease agreement with Head Start Child Development Council, Inc., for the Lodi Look Building.

BACKGROUND INFORMATION: The Parks and Recreation Department and Head Start Child Development Council, Inc. have negotiated a three-year agreement for the Head Start program to operate its program at the Lodi Look Building, 221 East Lawrence Street.

Elements of the lease include a three-year term for this 960 square feet building with monthly payments of \$850. The length of the term shall be from August 1, 2010 through July 31, 2012, and is subject to renewal following review and approval by the City Council. Within **45** days of the commencement date, Head Start shall have the right to terminate this Agreement, in the event that Head Start is unable to obtain licensing to operate its program due to a structural or other defect in the premises. All utilities and building maintenance will be the responsibility of Head Start.

The Lodi Look Building is located in the north parking lot of the Grape Bowl, adjoining Lawrence School. It has been vacant the last two years but was used by the Parks and Recreation Department's after-school program until 2008.

FISCAL IMPACT: The terms of the agreement include revenues to the City of Lodi Parks and Recreation Department of \$30,600.

FUNDING AVAILABLE: There will be no General Fund contribution for the operation of this program.

Steve Dutton for

James M. Rodems
Interim Parks and Recreation Director

Prepared by Michael Reese, Recreation Manager

JMR:MR:tl

Cc: City Attorney

APPROVED:

Konradt

Konradt Bartlam, Interim City Manager

LEASE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of July, 2010 by and between the City of Lodi, a municipal corporation (hereinafter "CITY"), and Head Start Child Development Council, Inc. hereinafter ("Head Start").

WITNESSETH:

1. PREMISES: That for and in consideration of the programming services to be rendered by Head Start, and the covenants to be faithfully kept and performed by Head Start, Head Start does hereby rent from CITY, the premises described as the Lodi Look Building, located in the north parking lot of the Grape Bowl, at 221 East Lawrence Street, Lodi, California and all improvements thereto (the "Premises") for the operation of a Head Start program.

2. TERM: The term of this Agreement shall be for a three-year period beginning on August 1, 2010 ("Commencement Date") and continuing through July 31, 2013, unless otherwise terminated under the terms of this Agreement. This Agreement is subject to renewal following review and approval by the City Council for the City of Lodi. Head Start may terminate the tenancy by giving written notice at least 30 days prior to the intended termination date. CITY may terminate the tenancy by giving written notice as provided by law. Such notices may be given on any date. Notice(s) shall be given in the manner set forth in Paragraph 24 of this Agreement.

Within forty-five (45) days of the Commencement Date, Head Start shall have the right to terminate this Agreement, in the event that Head Start is unable to obtain licensing to operate its program due to a structural or other defect in the Premises. In the event of such termination, rental payments shall be reduced pro-rata and the Premises surrendered to CITY as set forth in Paragraph 17 of this Agreement.

3. RENT: In consideration of this Agreement, Head Start agrees to pay CITY the sum of \$850.00 per month, due and payable by the 1st day of each month, commencing on August 1, 2010. A late charge of \$60.00 may be assessed for any payment more than 10 days past due. Rental payments shall be directed to the City of Lodi, Attn: Parks & Recreation Department, 125 N. Stockton Street, Lodi, California, 95240, for processing and shall be paid without prior notice or demand to Head Start.

4. USE/USE PROHIBITED: The Premises shall be used solely for the purpose of operating a Head Start Program. Head Start shall not use any portion of the Premises for purposes other than those specified herein, and no use shall be made or permitted to be made upon the Premises, nor acts done, which will increase the existing rate of insurance upon the Premises, or cause cancellation of insurance policies covering the Premises. Head Start shall not conduct or permit any sale by auction on the Premises.

5. ORDINANCES AND STATUTES: It is further understood and agreed by Head Start that Head Start must comply with all present and future laws, ordinances, rules, and regulations promulgated by any governmental authority of competent jurisdiction regulating the type of business to be conducted on the Premises during the term of this Agreement and any extension thereof. Head Start shall use and occupy the Premises in a quiet, lawful, and orderly manner. The commencement or pendency of any state or

federal court abatement proceeding affecting the use of the Premises shall, at the option of the CITY, be deemed a breach hereof.

6. SIGNS: All signs and locations of signs must be approved by CITY. All costs associated with the purchase and installation of signs shall be the responsibility of Head Start unless otherwise agreed to by the parties.

7. ABANDONMENT OF PREMISES: Head Start shall not vacate or abandon the Premises at any time during the term hereof, and if Head Start shall abandon or vacate the Premises, or be dispossessed by process of law, or otherwise, any personal Premises belonging to Head Start left upon the Premises shall be deemed to be abandoned, at the option of CITY.

8. IMPROVEMENTS: Any and all improvements made to the Premises during the term hereof shall belong to the CITY.

9. DESTRUCTION OF THE PREMISES: In the event of a partial destruction of the Premises during the term hereof, from any cause, CITY shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this Agreement. If such repairs cannot be made within sixty (60) days, CITY, at its option, may make the same within a reasonable time, this Agreement continuing in effect, and in the event that CITY shall not elect to make such repairs which cannot be made within sixty (60) days, this Agreement may be terminated at the option of either party.

In the event that the Premises is destroyed to an extent of not less than one-third of the replacement costs thereof, CITY may elect to terminate this Agreement whether the Premises be injured or not. A total destruction of the Premises shall terminate this Agreement.

In the event of any dispute between CITY and Head Start with respect to the provisions hereof, the matter shall be settled by arbitration in such a manner as the parties may agree upon, or if they cannot agree, in accordance with the rules of the American Arbitration Association. Arbitration will be conducted in Stockton, California, unless otherwise agreed to in writing by the parties.

10. REMEDIES OF CITY ON DEFAULT: In the event of any breach of this Agreement by Head Start, CITY may, at its option, terminate this Agreement enforce all his rights and remedies under this Agreement, including the right to recover the rent as it becomes due under this Agreement. If such breach continues, CITY may, at any time thereafter, elect to terminate this Agreement.

11. RELATIONSHIP OF PARTIES: It is understood and agreed that the relationship between the parties is that of landlord and tenant and not as a party or agent of the other.

12. INSURANCE: Head Start shall carry Worker's Compensation Insurance and observe all laws and regulations applicable to employers in the State of California.

13. BUILDING MAINTENANCE: Building Maintenance (Janitorial Services) shall be the responsibility of Head Start.

14. ASSIGNMENT AND SUBLETTING: Head Start shall not assign this Agreement or sublet any portion of the Premises without prior written consent of the CITY. Any such assignment or subletting without consent shall be void and, at the option of the CITY, may terminate this Agreement.

15. ENTRY AND INSPECTION: Head Start shall permit CITY or CITY's agents to enter upon the Premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same.

16. MAINTENANCE, REPAIRS, and ALTERATIONS OR ADDITIONS: Head Start acknowledges that the Premises are in good order and repair, unless otherwise indicated herein. Head Start shall, at his own expense and at all times, maintain the Premises in good and safe condition, including plate glass, and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Head Start shall be responsible for all repairs required, excepting the roof, exterior walls, structural foundations, and common areas which shall be maintained by CITY. No repairs, alterations or additions to the Premises shall be made without prior written consent of CITY. Prior to the commencement of any substantial repair, improvement, or alteration, Head Start shall give CITY at least two (2) days written notice in order that CITY may post appropriate notices to avoid any liability for liens. Head Start shall not commit any waste upon the Premises or to the real property upon which the Premises are situated, or any nuisance or act which may disturb the quiet enjoyment of CITY.

17. SURRENDER OF PREMISES: Head Start shall, at the termination of the Agreement hereby created, or upon the earlier termination hereof for any reason, or upon the extension of the term herein set forth, quit and surrender the Premises in good order, condition, and repair, reasonable wear and tear and acts of God or fire excepted.

18. FEES: To the extent applicable, Head Start shall pay all license fees, or other fees or taxes, including possessory interest taxes, levied by any governmental agency which may be imposed upon the operations of Head Start conducted upon the Premises.

If any of the above charges are assessed against the Premises, and because of said assessment, the CITY pays the same, the CITY will have the right to, regardless of the validity of any such levy, demand that Head Start repay to CITY all taxes and other assessments so levied against CITY.

19. UTILITIES: Head Start agrees that it shall be responsible for the payment of all utilities, including water, gas, electricity, heat, telephone and other services delivered to the Premises. During the term of this Agreement, and any extension thereof, it is understood and agreed by the parties hereto that Head Start shall be responsible for the installation, maintenance and cost of any telephone lines that are required to operate its business, at no cost to CITY.

20. MECHANIC'S LIEN: Head Start agrees to keep the Premises free from all liens and claims of mechanics, laborers, material suppliers, and others for work done, and material furnished, and Head Start shall not create, or suffer to be created, any lien or encumbrance on the Premises.

21. PUBLIC LIABILITY AND PREMISES DAMAGE INSURANCE: Head Start, at its expense, shall maintain insurance including bodily injury and property damage insuring Head Start and CITY with minimum coverage of \$1,000,000 each occurrence. More particularly described as follows:

Head Start agrees to indemnify and save harmless CITY from and against all claims of whatever nature arising from any act, omission, or negligence of Head Start or Head Start's contractors, licensees, agents, servants, or employees, or arising from any accident, injury, or damage whatsoever caused any person, or to the Premises of any person, occurring during the term thereof, in or about the Premises where such accident, damage, or injury, including death, results, or is claimed to have resulted, from any act or omission on the part of Head Start or Head Start's agents or employees. This indemnity and hold harmless agreement shall include indemnity against all costs and expenses, including attorney's fees incurred in or in connection with any such claim or proceeding brought thereon and the defense thereof.

Head Start agrees to maintain in full force during the term hereof a policy of liability insurance under which Head Start is named as insured, and containing an additional named insured endorsement naming CITY as an additional insured, and under which the insurer agrees to indemnify and hold Head Start and CITY harmless from and against all costs, expenses, and liability arising out of, or based upon, any and all property damage, or damages for personal injuries, including death, sustained in accidents occurring in or about the Premises, where such accident, damage, or injury, including death, results, or is claimed to have resulted, from any act or omission on the part of Head Start, or Head Start's agents or employees. The minimum limits of such insurance shall be \$1,000,000 (One Million Dollars). In addition to the additional named insured endorsement on CITY's policy of insurance, said insurance policy shall be endorsed to include the following language:

"Insurance as is afforded by the endorsement for additional insureds shall apply as primary insurance. Any other insurance maintained by the CITY or its officers and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."

To the maximum extent permitted by insurance policies which may be owned by CITY or Head Start, CITY and Head Start, for the benefit of each other, waive any and all rights of subrogation which might otherwise exist.

A duplicate or certificate of said liability and property damage insurance policy containing the above-stated required endorsements shall be delivered to CITY within ten (10) days after the issuance and each renewal of said policy. This paragraph, and all other provisions of this Agreement, shall apply and be construed as applying to any subtenant of Head Start.

22. ATTORNEY'S FEES: In case suit should be brought for recovery of the Premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the Premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee, the amount of which shall be determined by the court in such suit and added to and become a part of the judgment therein.

23. **WAIVER:** Failure of CITY to insist upon performance of any of the terms or conditions of this Agreement in any one or more instances shall in no event be construed as a waiver or a relinquishment of its right to future performance thereof, and Head Start's obligations to such future performance shall continue in full force and effect.

24. **NOTICES:** Any notice which either party may or is required to give, shall be given by mailing the same, postage prepaid, to Head Start at the premises, or CITY at the address shown below, or at such other places as may be designated by the parties from time to time as provided herein.

CITY:

City of Lodi
James Rodems, Interim Director
Parks & Recreation Department
125 N. Stockton Street
Lodi, CA 95240

HEAD START:

Head Start Child Development Council, Inc.
Gloryanna Rhodes, Executive Director
5361 North Pershing Ave., Ste. A
Stockton, CA 95207

With copy to:

Janice D. Magdich, Deputy City Attorney
Office of the City Attorney
221 West Pine Street
Lodi, CA 95240

Notice by first class mail, postage prepaid, shall be deemed to have been made 3-days from the date of mailing. Notice by over-night delivery or hand-delivery shall be deemed to have been made as of the date of receipt.

25. **HOLDING OVER:** If applicable under this Agreement, any holding over after the expiration of this Agreement, with the consent of CITY, shall be construed as a month-to-month tenancy, otherwise in accordance with the terms hereof, as applicable.

26. **TIME:** Time is of the essence of this Rental Agreement.

27. **HEIR, ASSIGNS, and SUCCESSORS:** This Rental Agreement is binding upon and inures to the benefit of the heirs, assigns and successors in interest to the parties.

28. **COST OF LIVING INCREASE:** The rent provided for in paragraph 3 shall be adjusted effective upon the first day of the month immediately following the expiration of 12 months from the Commencement Date and upon the expiration of each 12 month period thereafter in accordance with changes in the U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (1982-84=100) for San Francisco-Oakland-San Jose, hereinafter called the "CPI-U". The monthly rent shall be increased to an amount equal to the monthly rent set forth in paragraph 3 multiplied by a fraction the numerator of which is the CPI-U for the third calendar month immediately preceding the adjustment date and the denominator of which is the CPI-U for the third calendar month preceding the commencement of the lease term. Provided, however, in no event shall the monthly rent be less than the amount set forth in paragraph 3.

29. OWNER'S LIABILITY: The term "Owner" as used in this paragraph, shall mean only the owner of the real property that is the subject of this agreement. In the event of any transfer of such title or interest, the Owner named herein (or the grantor in case of any subsequent transfers) shall be relieved of all liability related to Owner's obligations to be performed after such transfer. Provided, however, that any funds in the hands of Owner or Grantor at the time of such transfer shall be delivered to Grantee. Owner's aforesaid obligations shall be binding upon Owner's successors and assigns only during their respective periods of ownership.

30. ACCEPTANCE OF THE PREMISES: Head Start has examined the Premises knows the conditions thereof, and accepts possession thereof in its present condition.

31. CONTRACT: This written agreement constitutes the entire agreement between Head Start and CITY, and no representation or agreement, whether oral or written, unless expressed herein, shall be binding on either Head Start or CITY.

32. GOVERNING LAW: This Agreement shall be construed and governed by California law.

33. AUTHORITY: The signatories to this Agreement represent that each has full right, power, and authority to execute this Agreement on behalf of the entity each purports to represent.

34. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Agreement must be in writing and executed by both parties.

IN WITNESS WHEREOF, CITY and Head Start have executed this Agreement on the date and year first above written.

"CITY"

"HEAD START"

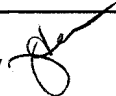
City of Lodi,
a municipal corporation

Head Start Child Development Council, Inc.

By _____
Konradt Bartlam
Interim City Manager

By _____
Gloryanna Rhodes, Executive Director

APPROVED AS TO FORM:
D. STEPHEN SCHWABAUER, City Attorney

By: _____
Janice D. Magdich
Deputy City Attorney 

ATTEST :

By : _____
Randi Johl
City Clerk

D-4

RESOLUTION NO. 2010-_____

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING THE LEASE AGREEMENT TO HEAD START
CHILD DEVELOPMENT COUNCIL, INC. FOR THE
LODI LOOK BUILDING

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WHEREAS, the Parks and Recreation Department and Head Start Child Development Council, Inc. have negotiated a three-year agreement for the Head Start program to operate its program at the Lodi Look Building, 221 East Lawrence Street; and

WHEREAS, elements of the lease include a three-year term for this building of 970 square feet with a monthly rental payment of \$850; and

WHEREAS, the length of the term shall be from August 1, 2010 through July 31, **2013**, and is subject to renewal following review and approval by the City Council; and

WHEREAS, within 45 days of the commencement date, Head Start shall have the right to terminate this Agreement in the event that Head Start is unable to obtain licensing to operate its program due to a structural or other defect in the premises; and

WHEREAS, all utilities and building maintenance will be the responsibility of Head Start.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the lease agreement between the City of Lodi and Head Start Child Development Council, Inc. for the Lodi Look Building, 221 East Lawrence Street.

Dated: July 21, 2010

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I hereby certify that Resolution No. 2010-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held July 21, 2010, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

RESOLUTION NO. 2010-119

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING THE LEASE AGREEMENT TO HEAD START
CHILD DEVELOPMENT COUNCIL, INC. FOR THE
LODI LOOK BUILDING

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WHEREAS, the Parks and Recreation Department and Head Start Child Development Council, Inc. have negotiated a three-year agreement for the Head Start program to operate its program at the Lodi Look Building, 221 East Lawrence Street; and

WHEREAS, elements of the lease include a three-year term for this building of 970 square feet with a monthly rental payment of \$850; and

WHEREAS, the length of the term shall be from August 1, 2010 through July 31, 2013, and is subject to renewal following review and approval by the City Council; and

WHEREAS, within 45 days of the commencement date, Head Start shall have the right to terminate this Agreement in the event that Head Start is unable to obtain licensing to operate its program due to a structural or other defect in the premises; and

WHEREAS, all utilities and building maintenance will be the responsibility of Head Start.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the lease agreement between the City of Lodi and Head Start Child Development Council, Inc. for the Lodi Look Building, 221 East Lawrence Street.

Dated: July 21, 2010

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I hereby certify that Resolution No. 2010-119 was passed and adopted by the City Council of the City of Lodi in a regular meeting held July 21, 2010, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Mounce, and
Mayor Katzakian

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


RANDI JUHL
City Clerk